UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
KANG, INSUN

ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 August 2009*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,4-7,9-13,15-18,20-24,26-29,31-35,37-40 and 42-44* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 2, 4-7, 9-13, 15-18, 20-24, 26-29, 31-35, 37-40, and 42-44* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____ .

DETAILED ACTION

1. This action is responding to the amendment filed on 8/24/2009.

2. Claims 1, 2, 4-7, 9-13, 15-18, 20-24, 26-29, 31-35, 37-40, and 42-44 are pending in the

application.

Claim Rejections - 35 USC § 112

3.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the
> subject matter which the applicant regards as his invention.

4.   Claims 23, 24, 26-29, and 31-33 are rejected under 35 U.S.C. 112, second paragraph, as

being indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention.

        Claim 23 recites the limitation "the computer readable storage medium" in 4. There is

insufficient antecedent basis for this limitation in the claim. Interpretation: the computer readable

recordable-type medium. Per claim 26, it is interpreted that this claim depends on claim 24. Per

claim 31, it is interpreted that this claim depends on claim 29.

        Per claims 24, 27-29, 32, and 33, these claims are rejected based on dependency on claim

23.

Double Patenting

5.   The nonstatutory double patenting rejection is based on a judicially created doctrine
grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or
improper timewise extension of the "right to exclude" granted by a patent and to prevent possible
harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed.
Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686
F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA
1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).
        A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to
overcome an actual or provisional rejection based on a nonstatutory double patenting ground
provided the conflicting application or patent is shown to be commonly owned with this

application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6.   Claims 1, 2, 4-7, 9-13, 15-18, 20-24, 26-29, 31-35, 37-40, and 42-44 are provisionally

rejected on the ground of nonstatutory obviousness-type double patenting as being

unpatentable over claims 1-28 of copending Application No.10/730901 hereafter '901 in

view of King et al. (US 6,252,592) hereafter King.

The following example is given:
Per claim 1:

'901 claims:

-A method of tuning an application deployed in an application server (A method of

tuning an application deployed in an application server, claim 1)

-deploying the application in the application server ("deploying the application in the

application server," claim 1)

-invoking an application tuning tool to display an interface including displays of current

values of application parameters and measurements of performance of the application

("invoking an application tuning server-side component operable to retrieve information

relating to parameters of the deployed application that are to be tuned current values of

parameters of the deployed application that are to be tuned and measurements of performance

of the application… with the parameter from a display," claim 1)

'901 does not explicitly recite that the interface displays emphasize importance of a

particular parameter over another parameter as recited in the instant claim 1. However, King

teaches such an interface using visual elements such as a tab was known in the pertinent art, at

the time applicant's invention was made, to provide a specific order of access (i.e. col. 2 lines 23-40)." It would have been obvious for one having ordinary skill in the art to modify the instant claim to incorporate the teachings of King. The modification would be obvious because one having ordinary skill in the art would be motivated to define the sequence of visual elements in the instant claim by using tabbing order so that the user can quickly navigate among the visual elements in a specific order (i.e. col. 2 lines 23-40).

'901 further claims:

- the interface comprises a first portion operable to display the current values of application parameters, and a second portion operable to display the measurements of performance of the application, wherein when the first portion changes to display values of different application parameters, the second portion continues to display the measurements of performance of the application ; receiving specifications of values of application tuning parameters; and tuning the deployed application using the received specified parameter values (claim 1).

The instant claim does not explicitly recite displaying an effect of the modification of the value of the parameters of the deployed application on system and application… parameter in real time as recited in '901 claim 1. However, it would have been obvious for one of ordinary skill in the art of program development at the time the instant invention was made to modify the '901 method by omitting the step of displaying a measurement…application performance in real time as recited in '901 claim 1 for the purpose of expediting the method.

This is a <u>provisional</u> obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 103

7.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

>   (a) A patent may not be obtained though the invention is not identically disclosed or
>   described as set forth in section 102 of this title, if the differences between the subject
>   matter sought to be patented and the prior art are such that the subject matter as a whole
>   would have been obvious at the time the invention was made to a person having ordinary
>   skill in the art to which said subject matter pertains. Patentability shall not be negatived
>   by the manner in which the invention was made.

8.   Claims 1, 2, 4, 7, 9, 12, 13, 15, 18, 20, 23, 24, 26, 29, 31, 34, 35, 37, 40, and 42 are

rejected under 35 U.S.C. 103(a) as being unpatentable over Dumarot et al. (US patent. RE38865)

hereafter "Dumarot" in view of King et al. (US 6,252,592) hereafter King.

Per claim 1:

Dumarot discloses:

-tuning an application deployed in an application server (i.e. "*adjust system or

application parameters in order to optimize the operation of the application*," col. 7, lines 1-25;

col. 6 lines 20-26; "an optimization process 300 that the *local computer 12 or server 130 uses to

optimize software applications* 138 and system response or utilization, or to provide

recommendations 480... the optimizer 136 gathers relevant system information including:

operating system 150 version and release data, installed hardware components, hardware

configuration, and software configurations (col. 5, lines 34-41);

-deploying the application in the application server; (i.e. "*program application

performance on a computer system* ... configuration information and performance capabilities

based on characteristics of the program/system ...the configuration

information and the performance capabilities are used to optimize configuration

parameters of the program applications so as to enhance the performance of the

workstation in running the program system," col. 3 lines 40-52)

-invoking an application tuning tool to display an interface including displays of current

values of application parameters and measurements of performance of the application (i.e. "The

optimization database table …the *optimizer program*…on the local computer and/or the remote

computer. The optimizer program *contains or accesses* a dynamic monitor 137 of system and

application activity…*particular settings of the application* that may affect application

performance," col. 4, lines 43-59; "the optimizer 136 gathers relevant system information…the

optimizer may query the current CPU use, memory use, or other activity," col. 5, lines 37-59;

the optimizer may query the current CPU use, memory use, or other activity," col. 5, lines56-

59; "control various parameters 420, associated with a particular application name," col. 5 lines

41-55).

Dumarot does not explicitly teach that the interface displays emphasize importance of a

particular parameter over another parameter. However, King teaches such an interface using

visual elements such as a tab was known in the pertinent art, at the time applicant's invention was

made, to provide a specific order of access (i.e. col. 2 lines 23-40)." It would have been obvious

for one having ordinary skill in the art to modify Dumarot's disclosed system to incorporate the

teachings of King. The modification would be obvious because one having ordinary skill in the

art would be motivated to define the sequence of visual elements in Dumarot by using tabbing

order so that the user can quickly navigate among the visual elements in a specific order (i.e. col.

2 lines 23-40).

Dumarot further discloses:

-the interface comprises a first portion operable to display the current values of application

parameters, and a second portion operable to display the measurements of performance of the

application, wherein when the first portion changes to display values of different application

parameters, the second portion continues to display the measurements of performance of the

application (i.e. col. 6 lines 9-25; col. 5 lines 55-67);

-receiving specifications of values of application tuning parameters (i.e. "The *optimizer*

program 136 may contain a graphical user interface 139, used to

specify settings or provide information to the user.(col. 4, lines 55-58)

-and tuning the deployed application using the received specified parameter values (i.e.

"the optimizer … can *adjust the following parameter settings* …to adjust performance," col. 6

lines 9-26).

Per claim 2:

Dumarot further discloses:

-wherein the step of invoking the application tuning tool is performed in response to an

action by an administrator, engineer, or user of the application server (i.e. "user-specified

preferences," col. 3, lines 15-20; the user may enter text or data … that specifies a level of

optimization …application settings," col. 6 lines 9-20).

Per claim 4:

Dumarot further discloses:

-wherein the application tuning server-side component is operable to accept input from

the administrator, engineer, or user to specify values of the parameters of the deployed

application that are to be tuned (i.e. "user-specified preferences," col. 3, lines 15-20; the user

may enter text or data … that specifies a level of optimization …application settings," col. 6

lines 9-20).

Per claim 7:

King further discloses:

-the interface comprises: a plurality of tabs, each tab operable to display information each

tab operable to display information relating to a type of parameters represented by the tab (i.e.

col. 2 lines 23-40).

Per claim 9:

Dumarot further discloses:

- the first portion operable to display the current values of application parameters

represented by a selected tab is further operable to accept input from the administrator,

engineer, or user to specify values of the application parameters. (i.e. "user-specified

preferences," col. 3, lines 15-20; the user may enter text or data … that specifies a level of

optimization …application settings," col. 6 lines 9-20).

Per claims 12, 13, 15, 18, and 20, they are the system versions of claims 1, 2, 4, 7, and 9

respectively, and are rejected for the same reasons set forth in connection with the rejection of

claims 1, 2, 4, 7, and 9 above.

Per claims 23, 24, 26, 29, and 31, they are the product versions of claims 1, 2, 4, 7, and 9,

respectively, and are rejected for the same reasons set forth in connection with the rejection

of claims 1, 2, 4, 7, and 9 above.

Per claims 34, 35, 37, 40, and 42, they are the tool versions of claims 1, 2, 4, 7, and 9

respectively, and are rejected for the same reasons set forth in connection with the rejection of

claims 1, 2, 4, 7, and 9 above.

9.   Claims 5, 6, 10, 11, 16, 17, 21, 22, 27, 28, 32, 33, 38, 39, 43, and 44 are rejected under 35

U.S.C. 103(a) as being unpatentable over Dumarot et al. (US patent. RE38865) hereafter

"Dumarot," in view of King et al. (US 6,252,592) hereafter King, and further in view of

Applicant's Admitted Prior Art (hereinafter referred to as "APA") disclosed in the instant

application.

Per claim 5:

Dumarot discloses adjusting application parameters for optimal performance (i.e. col. 7,

lines 1-25; col. 6 lines 20-26) but Dumarot and King do not explicitly teach that the values of

application parameters comprise at least one of: Database Connection Pool size, Thread Pool

Size, HTTP connection pool size, HTTP incoming connection queue length, HTTP Socket

timeout, Session pool size, and Java Virtual Machine tuning parameters. However, APA teaches

tuning such configuration parameters were known in the pertinent art, at the time applicant's

invention was made, to minimize response time or maximize throughput etc ("modification of

multiple configuration parameters such as thread pool size, connection pool size, transaction

timeout period, various Java Virtual Machine…parameters," page 1). It would have been

obvious for one having ordinary skill in the art to modify Dumarot and King's disclosed system

to incorporate the teachings of APA. The modification would be obvious because one having

ordinary skill in the art would be motivated to optimize performance by tuning configuration

parameters such as thread pool size (page, lines 19-21) as suggested by APA.

Per claim 6:

APA further discloses:

wherein the measurements of performance of the application comprise at least one of:

Overall transactions per second, Average Request Time, HTTP transactions per second,

Database connections used, HTTP connections used, Active thread count, Overall throughput,

Database throughput, HTTP throughput (i.e. "application performance is typically measured in

terms of response time, transactions per second, throughput etc," page 1, lines 13-18).

Per claims 10 and 11, these claims are other versions of the claimed methods discussed in

claims 5 and 6, wherein all claim limitations also have been addressed and/or covered in cited

areas as set forth the above.

Per claims 16, 17, 21, and 22, they are the system versions of claims 5, 6, 10, and 11,

respectively, and are rejected for the same reasons set forth in connection with the rejection of

claims 5, 6, 10, and 11 above.

Per claims 27, 28, 32, and 33, they are the product versions of claims 5, 6, 10, and 11,

respectively, and are rejected for the same reasons set forth in connection with the rejection of

claims 5, 6, 10, and 11 above.

Per claims 38, 39, 43, and 44, they are the tool versions of claims 5, 6, 10, and 11,

respectively, and are rejected for the same reasons set forth in connection with the rejection of

claims 5, 6, 10, and 11 above.

Response to Amendment

10.   The amendment filed on 8/24/2009 is not responsive because: per claim 8: it appears that the identifier "canceled" should be used. Per claim 23, in line 4, "storage" was previously presented but is underlined.

Response to Arguments

11.   Applicant's arguments filed on 8/24/2009 have been fully considered but they are not persuasive.

12.   The applicant states that: Dumarot does not disclose that the interface comprises a first portion operable to display the current values of application parameters, and a second portion operable to display the measurements of performance of the application, wherein when the first portion changes to display values of different application parameters, the second portion continues to display the measurements of performance of the application.

        In response, Dumarot discloses an optimizer program that optimizes the setting of various parameters in hardware, operating system software or application software such that the system as a whole runs as efficiently as possible by setting the parameters corresponding to a user's satisfaction (col. 3 lines 25-40). The optimizer optimizes various user applications 138 running on a computer that are controlled by a configuration file or a central databases that controls particular settings of the applications that may affect application performance (i.e. col. 4 lines 43-60). The optimizer queries the current CPU use, memory use or other activity displayed on gui based on reading user input where the user specifies a level of optimization to control which of the application settings are used to optimize the application and the optimizer can adjust the following parameter settings to adjust corresponding performance based on the adjustment of the

particular settings (i.e. col. 6 lines 9-25). The optimizer's graphical user interface used to specify

settings also displays the performance activities in graphical form based on the settings (i.e. col.

5 lines 55-67).

13.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to INSUN KANG whose telephone number is (571)272-3724. The

examiner can normally be reached on M-R 7:30-6 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Lewis A. Bullock, Jr. can be reached on 571-272-3759. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

like assistance from a USPTO Customer Service Representative or access to the automated

information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Insun Kang/
Primary Examiner, Art Unit 2193